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EXTRAORDINARY

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PART II—Section 1

प्रधिकार से प्रकाशित

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NEW DELHI, SATURDAY, AUGUST 28, 1971/BHADRA 6, 1893

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिस से कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 28th August, 1971/Bhadra 6, 1893 (Saka)

The following President's Acts are published for general information:

THE CALCUTTA TRAMWAYS COMPANY (TAKING OVER
OF MANAGEMENT) AMENDMENT ACT, 1971

No. 6 OF 1971

Enacted by the President in the Twenty-second Year of the
Republic of India.An Act further to amend the Calcutta Tramways Company (Taking
over of Management) Act, 1967.In exercise of the powers conferred by section 3 of the West Bengal
State Legislature (Delegation of Powers) Act, 1971, the President is
pleased to enact as follows:—

1. This Act may be called the Calcutta Tramways Company (Taking over of Management) Amendment Act, 1971.
2. In section 3 of the Calcutta Tramways Company (Taking over of Management) Act, 1967 (hereinafter referred to as the principal Act), in sub-section (2),—
 - (i) for the words "four years", the words "five years" shall be substituted;
 - (ii) in the proviso, for the words "four years", the words "five years" shall be substituted.
3. In section 6 of the principal Act, for the words "four years", the words "five years" shall be substituted.

West Bengal
Act XVI of
1967.Amendment
of section
3.Amendment
of section
6.

**Repeal and
savings.**

4. (1) The Calcutta Tramways Company (Taking over of Management) Amendment Ordinance, 1971, is hereby repealed.
ro of 1971.

(2) Notwithstanding such repeal, anything done, any action taken or any order made under the Calcutta Tramways Company (Taking over of Management) Act, 1967, as amended by the said Ordinance, shall be deemed to have been done, taken or made under the corresponding provisions of the said Act, as amended by this Act, as if this Act had come into force on the 17th day of July, 1971.

West Bengal
Act XVI of
1967.

V. V. GIRI,

President.

N. D. P. NAMBOODIRIPAD,

Joint Secy. to the Govt. of India.

Reasons for the enactment

The operation of the Calcutta Tramways Company is governed by the Calcutta Tramways Act, 1951, but in 1967, on the ground that the Company had not been managing its affairs properly, the State Government enacted the Calcutta Tramways Company (Taking over of Management) Act, 1967.

2. Under section 3(1) of the Act of 1967, the State Government took over the management of the Undertaking. According to the original provisions of the said section 3(1), any order issued thereunder could remain in force for a period of three years from the date of its publication in the Official Gazette. This period of three years terminated on the 19th July, 1970. If the Act was not extended, the Government management would have terminated and the management of the Undertaking would have reverted to the Company. Under the Calcutta Tramways Act, 1951, it is open to the State Government to purchase the Undertaking on the 1st January, 1972 after giving one year's notice or on the 1st January of any subsequent year after giving two years' notice. As it was not intended that the management should revert to the Company, it was necessary to continue the existing arrangements for the administration of the Undertaking. The West Bengal Government accordingly proposed in 1970 that a President's Act be enacted for the extension of the period of the management. Accordingly, the Calcutta Tramways Company (Taking over of Management) Amendment Act, 1970, was enacted as a President's Act to give effect to the extension of the management for a further period of one year with effect from the 19th July, 1970.

3. After the Presidential Act was enacted, the State Government appointed a Negotiating Committee consisting of three officers of the State Government and three officers nominated by the Government of India to conduct negotiations with the Company regarding the price to be offered for the purchase of the Undertaking. The report of the Negotiating Committee was submitted to the State Government in March, 1971. Since no decision could be taken in the matter, the State Government intimated in July, 1971, that steps would have to be taken to extend the period of management of the Calcutta Tramways Company by the State Government for a further period of one year beyond the 18th July, 1971. In view of the urgency and as the Rajya Sabha was not in session, it became necessary to issue an Ordinance extending the period of management of the Undertaking by the State Government by one year. The necessary Ordinance was promulgated on the 17th July, 1971. It will expire on the 30th August, 1971 and it is, therefore, necessary to have the Ordinance replaced by a President's Act before that date. Hence, the present Bill.

4. The Committee constituted under the proviso to sub-section (2) of section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1971 (31 of 1971), has been consulted before the enactment of this measure as a President's Act.

S. K. DATTA,

Secy. to the Govt. of India
Ministry of Shipping and Transport.

**THE WEST BENGAL EMPLOYEES' PAYMENT OF
COMPULSORY GRATUITY ACT, 1971**
No. 7 OF 1971

Enacted by the President in the Twenty-second Year of the Republic of India.

An Act to provide for a uniform scheme of retirement benefit for employees engaged in factories, plantations or shops and establishments and for matters connected therewith or incidental thereto.

31 of 1971. In exercise of the powers conferred by section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1971, the President is pleased to enact as follows:—

1. (1) This Act may be called the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971. Short title,
extent and
application.

(2) It extends to the whole of the State of West Bengal.

(3) It shall apply to—

63 of 1948. (a) any factory as defined in clause (m) of section 2 of the Factories Act, 1948;

69 of 1951. (b) any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951;

*West Bengal
Act XIII of
1963.* (c) any shop or establishment as defined in the West Bengal Shops and Establishments Act, 1963, in which ten or more persons are employed.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Collector" means the Collector of the district in which the factory, plantation, shop or establishment is situated and in the case

of a factory, plantation, shop or establishment situated in Calcutta means the Collector of the district of 24-Parganas.

Explanation.—For the purposes of this Act, “Calcutta” means the town of Calcutta as defined in the Calcutta Police Act, 1866, and includes the suburbs of the town of Calcutta as defined by notification made under section 1 of the Calcutta Suburban Police Act, 1866;

Bengal Act
IV of 1866.
Bengal Act
II of 1866.

(b) “completed year of service” means continuous service for one year;

(c) “continuous service” means uninterrupted service and includes service which is interrupted by sickness, accident, leave, strike which is not illegal or a lock out or cessation of work not due to any fault of the employee concerned;

(d) “controlling authority” means an authority appointed by the State Government under section 3;

(e) “employee” means any person (other than an apprentice) employed on wages, not exceeding rupees seven hundred and fifty per mensem, in any factory, plantation, shop or establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central or State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957;

45 of 1950.
46 of 1950.
62 of 1957.

(f) “employer” means—

(i) in relation to any factory, plantation, shop or establishment which is owned or managed by the Central or the State Government, a person or authority appointed by such Government for the supervision and control of employees or where no person or authority has been so appointed, the head of the Ministry or the Department concerned;

(ii) in relation to any factory, plantation, shop or establishment owned or managed by any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person, who or the authority which has the ultimate control over the affairs of the factory, plantation, shop or establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;

(g) “family”, in relation to an employee, shall be deemed to consist of—

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the widow and children of his predeceased son, if any,

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any:

Provided that if a female employee, by a notice in writing to the controlling authority, expresses her desire to exclude her husband from her family, the husband and his dependent parents shall no longer be deemed, for the purposes of this Act, to be included in the family of such female employee unless the said notice is subsequently withdrawn by such female employee.

Explanation.—In either of the above two cases if the child of an employee has been adopted by another person and if under the personal law of the adopter, adoption is legally recognized, such child shall be considered as excluded from the family of the employee;

(h) “notification” means a notification published in the Official Gazette;

(i) “prescribed” means prescribed by rules made under this Act;

(j) “retirement” means termination of the service of an employee for any cause, but does not include superannuation;

(k) “superannuation” means the termination of the service of an employee by the employer,—

(i) when the employee attains such age as is fixed in the contract or conditions of service as the age of superannuation; and

(ii) in any other case, when the employee attains the age of fifty-eight years;

(l) “wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and night allowance.

3. The State Government may, by notification, appoint any officer, ^{Controlling authority.} not below the rank of a Deputy Labour Commissioner, to be a controlling authority who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

4. (1) Gratuity shall be payable to an employee—

Payment of gratuity.

(a) on his superannuation,

(b) on his retirement or resignation,

(c) on his death or total disablement due to accident or disease,

after completion of not less than five years of continuous service:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Explanation.—For the purposes of this section, total disablement means such disablement as permanently incapacitates an employee for all work which he was capable of performing before the accident or disease resulting in such disablement.

(2) Notwithstanding anything contained in sub-section (1), no gratuity shall be payable to an employee whose employment has been terminated for his gross misconduct.

Explanation.—For the purpose of sub-section (2), “gross misconduct” means,—

(a) any act or wilful omission on the part of the employee resulting in loss or damage to, or destruction of, property belonging to or owned by the employer; or

(b) any serious act of violence on the part of the employee; or

(c) any act on the part of the employee which constitutes an offence involving moral turpitude punishable under the Indian Penal Code.

45 of 1860.

(3) In the case of death of an employee, the gratuity shall be payable to the nominee of the employee or in the absence of a nominee to his heirs.

(4) The employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned, for every completed year of service or part thereof in excess of six months:

Provided that the amount of gratuity payable to an employee shall not exceed fifteen months' wages:

Provided further that nothing in this section shall affect the right to any better terms of gratuity or retirement benefits under any award or agreement or contract with the employer.

Power to exempt.

5. The State Government may, by notification and subject to such conditions as may be specified in the notification, exempt any factory, plantation, shop or establishment to which this Act applies from the operation of the provisions of this Act if, in the opinion of the State Government, the employees in such factory, plantation, shop or establishment are in receipt of benefits not less favourable than the benefits conferred under this Act.

Nomination.

6. (1) Each employee who has completed one year of service shall make, within such time as may be prescribed, nomination for the purpose of sub-section (3) of section 4 in such form and in such manner as may be prescribed.

(2) An employee may in his nomination distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

(3) If an employee has a family at the time of making a nomination, the nomination shall be in favour of one or more members belonging to his family, and any nomination made by such employee in favour of a person not belonging to his family shall be void.

(4) If at the time of making a nomination the employee has no family, the nomination may be in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members belonging to his family.

(5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving a written notice of his intention to do so in such form and in such manner as may be prescribed.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination in respect of such interest.

7. (1) Any employee who is eligible for payment of gratuity on superannuation under this Act or any person authorised in writing to act on his behalf shall send a written application to the employer within such time and in such form as may be prescribed. Determination of the amount of gratuity.

(2) As soon as the amount of gratuity becomes payable, the employer shall give notice in writing to the person to whom the gratuity is payable and to the controlling authority specifying the amount of gratuity and the employer shall arrange to pay such amount within such time as may be prescribed to that person.

(3) If there is any dispute as to the amount of gratuity payable or as to the admissibility of the claim, the controlling authority, on an application made to it in this behalf in such manner as may be prescribed, shall determine the amount after due inquiry and if any amount is found to be due, the controlling officer shall direct the employer to pay the same to the person referred to in sub-section (2) within such time as may be prescribed.

(4) No order shall be made under sub-section (3) unless the parties to the dispute have been given a reasonable opportunity of being heard.

(5) For the purpose of conducting an inquiry under sub-section (3), the controlling authority shall have the same powers as are vested in a court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

(7) Any person aggrieved by an order under sub-section (3) may prefer an appeal to the State Government or such other authority as may be specified by the State Government in this behalf, within sixty days from the date of the receipt of the order and the decision of the State Government or other authority on such appeal shall be final.

Bengal Act
III of 1913.

8. If the amount of gratuity under this Act is not paid by the employer, within the time prescribed to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same as arrears of land revenue under the provisions of the Bengal Public Demands Recovery Act, 1913, and pay the same to the person entitled thereto.

9. (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such

payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) An employer who contravenes, or makes default in complying with any of the provisions of this Act or any rule made thereunder shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Cognizance
of offences.

10. (1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the State Government.

Protection
for acts
done in
good faith.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

11. No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rules made thereunder.

Power to make rules.

12. (1) The State Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

Repeal and
savings.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule, or decides that the rule shall not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. (1) The West Bengal Employees' Payment of Compulsory Gratuity Ordinance, 1971, is hereby repealed.

West Bengal
Ordinance
I of 1971.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had come into force on the 14th day of June, 1971.

V. V. GIRI,
President.

N. D. P. NAMBOODIRIPAD,
Joint Secy. to the Govt. of India.

Reasons for the enactment

On the 3rd June, 1971, the Governor of West Bengal promulgated an Ordinance entitled the West Bengal Employees' Payment of Compulsory Gratuity Ordinance, 1971. The said Ordinance provides for payment of gratuity to all employees employed in West Bengal in establishments governed by the Factories Act, 1948, Plantations Labour Act, 1951 or the West Bengal Shops and Establishments Act, 1963. Under the Ordinance, gratuity is payable to every employee who has rendered not less than five years of continuous service on his superannuation, retirement or resignation or death or total disablement due to accident or disease. The gratuity is payable at the rate of fifteen days' wages for every completed year of service subject to a maximum of fifteen months' wages. The Ordinance, however, empowers the State Government to exempt any factory, plantation or establishment from the provisions of the Ordinance if in the opinion of that Government the employees or any class of employees in such factory, plantation or establishment are in receipt of benefits better than the benefits conferred under the Ordinance.

2. The present enactment seeks to replace the said Ordinance with certain modifications mentioned below:—

(i) the operation of the enactment has been limited in relation to shops or establishments as defined in the West Bengal Shops and Establishments Act, 1963, in which ten or more persons are employed,

(ii) the benefit of gratuity under the proposed enactment has been restricted to those employees whose wages do not exceed seven hundred and fifty rupees per mensem or who do not hold a civil post under the Central or State Government,

(iii) the age of superannuation of an employee for the purpose of entitlement to gratuity has been fixed as fifty-eight years in cases where the age of superannuation is not stipulated in the contract or conditions of service of that employee or where no such contract subsists or no conditions of service have been specified,

(iv) wages have been so defined as to include dearness allowance but not house rent allowance,

(v) the qualifying period of five years of continuous service for entitlement to gratuity will not be applicable in the case of death or total disablement due to accident or disease of the employee,

(vi) an employee shall be disentitled to gratuity if his employment is terminated for gross misconduct,

(vii). a factory, plantation, shop or establishment would now be eligible for exemption if the employees therein are in receipt of benefits which are not less favourable than those provided under the present enactment.

3. The Committee constituted under the proviso to sub-section (2) of section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1971 (31 of 1971), has been consulted before enactment of this measure as a President's Act.

P. M. NAYAK,
Secy. to the Govt. of India,
Department of Labour and Employment.

THE INDUSTRIAL DISPUTES (WEST BENGAL AMENDMENT) ACT, 1971

No. 8 OF 1971

Enacted by the President in the Twenty-second Year of the Republic of India.

An Act further to amend the Industrial Disputes Act, 1947, in its application to the State of West Bengal.

In exercise of the powers conferred by section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1971, the President is
^{as of 1971} pleased to enact as follows:—

1. This Act may be called the Industrial Disputes (West Bengal Shorttitle. Amendment) Act, 1971.

2. The Industrial Disputes Act, 1947 (hereinafter referred to as the Application principal Act), shall, in its application to the State of West Bengal, be amended for the purpose and in the manner hereinafter provided.

3. After section 25FF of the principal Act, the following section shall be inserted, namely:—
^{Insertion of new section 25 FFA.}

“25FFA. (1) An employer who intends to close down an under- Sixty days’ taking shall serve, at least sixty days before the date on which the notice to be given of intended closure is to become effective, a notice, in the prescribed intention to manner, on the State Government stating clearly the reasons for close down any the intended closure of the undertaking.

Provided that nothing in this section shall apply to—

(a) an undertaking in which not more than fifty workmen are employed or were employed on any day of the preceding twelve months;

(b) a branch establishment, in the State of West Bengal,
of—

(i) an establishment, being a company, registered under ^{1 of 1966.}
the Companies Act, 1956, having registered office outside the
said State, or

(ii) any other establishment, having head office outside
the said State,

where the closure of such branch establishment has become
necessary consequent on the closure of the registered office or
the head office, as the case may be, of that establishment or
that other establishment.

(2) Notwithstanding anything contained in sub-section (1),
the State Government may, if it is satisfied that owing to such ex-
ceptional circumstances as accident in the undertaking or death of
the employer or the like it is necessary so to do, by order, direct that
provisions of sub-section (1) shall not apply in relation to such
undertaking for such period as may be specified in the order.”.

**Penalty for
closure
without
notice.**

4. After section 30 of the principal Act, the following section shall be
inserted, namely:—

**Insertion of
new section
30A.**

“30A. Any employer who closes down any undertaking without
complying with the provisions of section 25FFA, shall be punishable
with imprisonment for a term which may extend to six months and
with fine which may extend to five thousand rupees.”.

V. V. GIRI,
President.

—
N. D. P. NAMBOODIRIPAD,
Joint Secy. to the Govt. of India.

Reasons for the enactment

In the recent past a number of industrial establishments have closed down in West Bengal leading to loss of production and great hardships to the workers. There is at present no legal bar to the employers declaring sudden closures; under the Industrial Disputes Act, they are required to give either one month's notice or pay wages in lieu of notice to the workmen. Government consider that it should have an opportunity to go into the causes of closures and take such steps as it may think necessary for avoiding the closures. A compulsory notice of sixty days for this purpose is being provided for by suitable amendment of the Industrial Disputes Act, 1947.

2. The requirement of prior notice before closure shall not apply, however, in respect of (a) small establishments employing less than fifty workmen, (b) closure of branch establishments situated in the State of West Bengal in consequence of the closure of registered office or the head office, as the case may be, of establishments situated outside that State. Provision is also being made to grant exemptions from the requirement of prior notice in certain exceptional circumstances, such as, accident in the undertaking, death of the employer or the like. The proposed section 30A lays down the penalty for closing down any undertaking without the prescribed notice.

3. The Committee constituted under the proviso to sub-section (2) of section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1971 (31 of 1971), has been consulted before the enactment of this measure as a President's Act.

P. M. NAYAK,
Secy. to the Govt. of India.
Department of Labour and
Employment.

